

1 UNCERTIFIED ROUGH DRAFT

2 VIDEO TECHNICIAN: Today's date is October
3 the 10th 2013 and we're on the record at 1:56 p.m.

4 This is the video deposition of
5 Mr. Richard Baird and we're at 211 south Washington
6 street in Lansing Michigan. Can the witness be
7 sworn, please.

8 Sworn sworn?

9 MR. DeCHIARA: Good afternoon Mr. Baird my
10 name is Peter DeChiara I'm a lawyer with the law
11 firm of Cohen, Weiss and Simon LLP. We represent
12 the United auto workers international union in this
13 case.

14 Did you prepare in any manner for this
15 deposition?

16 A. Yes.

17 Q. What did you do?

18 A. I reviewed emails, reviewed other depositions and
19 discussed with my attorneys.

20 Q. What depositions did you review?

21 A. I reviewed the depositions for Kevyn Orr and for
22 Governor Snyder and my own deposition from a case
23 brought by Robert Davis.

24 Q. Okay that was the May 24th 2013 deposition?

25 A. I don't recall the exact date.

1 Q. Okay. It was in Davis versus local emergency
2 financial assistance loan board?

3 A. Yes.

4 Q. And it was in the spring of this year?

5 A. Yes.

6 Q. Other than your attorneys did you speak to anyone
7 else in preparation for this deposition?

8 A. No.

9 Q. Other than the deposition that you gave in the Davis
10 case, have you given any other depositions in 2013?

11 A. No.

12 Q. What about in 2012?

13 A. No.

14 Q. Are you familiar with an organization called MI
15 partners?

16 A. Yes.

17 Q. What is MI partners.

18 A. It's actually MI partners LLC a limited liability
19 corporation which is owned by me.

20 Q. Okay. Are you an employee of MI partners LLC?

21 A. I am.

22 Q. And what's your position?

23 A. I am its president.

24 Q. Are there any other employees?

25 A. No.

- 1 Q. Are there any other owners?
- 2 A. No.
- 3 Q. What business is MI partners in?
- 4 A. Provides consulting services mainly organizational
- 5 talent strategy.
- 6 Q. And how many clients does MI partners have?
- 7 A. One.
- 8 Q. And who is that or what is that?
- 9 A. It is the new energy to reinvent and diversify.
- 10 Q. And what services does MI partners provide to new
- 11 energy to reinvest and diversify.
- 12 A. No, energy to reinvent and diversify.
- 13 Q. I'm sorry, is it reinvent or reinvest?
- 14 A. Reinvent.
- 15 Q. I'm sorry, reinvent.
- 16 A. The fund which covers my fees, my services are
- 17 provided to the Governor, his executive office and
- 18 his extended leadership team.
- 19 Q. Do you receive any monies -- do you or do MI
- 20 partners receive any monies directly from the state?
- 21 A. No.
- 22 Q. Does new energy to reinvent and diversify receive
- 23 any monies from the state?
- 24 A. I don't know.
- 25 Q. Okay. Do you know whether -- I'm just going to

1 refer so I don't have to keep repeating that name
2 I'm just going to refer to it as NERD, N E R D. Is
3 that okay? Do you understand what I'm talking
4 about?

5 A. I will know the fund you're referring to.

6 Q. Does NERD receive any monies from any of the
7 creditors in the Detroit bankruptcy case?

8 A. I don't know.

9 Q. Okay. Do you know whether NERD receives any monies
10 from the Jones Day law firm?

11 A. I don't know.

12 Q. Do you know whether it receives any monies from
13 Kevyn Orr?

14 A. I don't know.

15 Q. Do you know who or what finances NERD?

16 A. I don't know the donors. I've been advised that
17 they are private donors but I have no way of knowing
18 who they are.

19 Q. And for how long has this arrangement existed
20 whereby NERD pays MI partners for you to provide
21 consulting services to the Governor and his staff?

22 A. Since January of 2011.

23 Q. Apart from the arrangement I just mentioned do you
24 have any other paid employment?

25 A. Employment, no.

1 Q. Do you have any other paid consultancy work that you
2 perform?

3 A. No.

4 Q. Are you an employee of this state of Michigan?

5 A. No.

6 Q. Okay. But you have a Michigan government email
7 address?

8 A. Yes.

9 Q. Okay. And do you have -- do you or MI partners have
10 offices out of which you work?

11 A. I have an office out of which I work at Romney and I
12 have an office off premise in Michigan.

13 Q. Do you or MI partners pay rent for your office in
14 the Romney building?

15 A. No.

16 Q. Have you played any -- as part of your consultancy
17 for the Governor and his staff, did you play or have
18 you played any role in connection with the
19 restructuring of the City of Detroit?

20 A. Define restructuring.

21 Q. The efforts by the City of Detroit to get its
22 economic house in order beginning before the
23 bankruptcy from whenever it began doing that up and
24 through to today?

25 A. I have not consulted with the City of Detroit on its

1 restructuring directly.

2 Q. Okay. Have you worked in your consultancy for the
3 Governor, has part of your work for the Governor
4 been in connection with the Detroit's restructuring
5 efforts?

6 A. No. Again, I have been involved in talent
7 identification assessment but not in the direct
8 restructuring efforts for the City of Detroit.

9 Q. Okay. Other than talent identification, have you
10 performed any other work that had to do with or that
11 related in some way to Detroit?

12 A. I would -- I have been part of meetings where if it
13 asked an opinion I would provide an opinion. If I
14 saw an area where I had some experience or value, I
15 would render that opinion. But in terms of specific
16 services of a restructuring nature, no.

17 Q. Do you as a regular matter as part of your work for
18 the Governor and his staff attend official meetings
19 of the Governor and his staff?

20 A. Yes.

21 Q. Okay. And how frequently do you do that?

22 A. Define frequently. Every day?

23 Q. Well why don't you just tell me how often you do it?

24 A. Well every day I'm probably in some meetings with
25 members of his staff.

1 Q. Would it be fair to say you work intimately with the
2 Governor and his staff?

3 A. Sure.

4 Q. Did you attend a meeting on January 29, 2013 at
5 which various law firms were making a pitch to be
6 hired as restructuring counsel by the City of
7 Detroit?

8 A. I don't recall the exact date but it was toward the
9 end of January.

10 Q. Okay. I'd like to show you a document which I'll
11 mark as Exhibit 1.

12 Exhibit 1 marked for identification

13 BY MR. DeCHIARA:

14 Q. And for the record I'll identify Exhibit 1 as
15 document that on the first page says presentation to
16 the City of Detroit, Detroit Michigan January 29,
17 2013. And it's Bate stamped the first page at the
18 bottom D T MI 00128731.

19 Mr. Baird looking at Exhibit 1 does that
20 refresh your recollection of the date of what I'll
21 call the pitch meeting?

22 A. Well the document's dated January 29th, if it was
23 delivered the same day then I was there.

24 Q. Okay. Who else besides you on behalf of the state
25 was at that meeting?

1 A. I'm not sure I recall everyone but Andy Dillon was
2 there, and Tom Saxton from treasury was there.

3 Those would be the only ones I recall from the state
4 right now.

5 Q. Do you have a recollection of what was -- do you
6 have a recollection of the meeting?

7 A. Yes.

8 Q. Okay. And Jones Day was one of the law firms that
9 made a pitch?

10 A. Correct.

11 Q. Do you have any recollection of what the people from
12 Jones Day said at the meeting?

13 A. I mean, that was eight, nine month ago but a
14 directional recollection, yes.

15 Q. What's the best of your recollection?

16 A. My recollection is that Jones Day -- well first of
17 all let me say that this was not a formal pitch.
18 This meeting was set up to provide the City the
19 emergency -- I'm sorry the program management
20 director and the C F O with some parameters
21 associated with what needs to be going into an R F P
22 that had yet to be completed. So this was simply
23 bringing together a number of law firms with
24 relevant experience to discuss things that the City
25 should contemplate keeping in mind for a future R F

1 P.

2 Q. Okay. Before I -- I have a -- I had asked you a
3 question about what was said by the Jones Day people
4 but before I ask you that let me ask you do you know
5 whether Jones Day provided any services paid or
6 unpaid or legal advice to the state prior -- at any
7 time prior to this meeting?

8 A. I don't know. I was not aware of any such services
9 provided.

10 Q. Okay. All right. So what's the best of your
11 recollection of what the Jones Day people said at
12 the meeting?

13 A. Well, they went through this presentation.

14 Q. You're referring to Exhibit 1?

15 A. Exhibit 1.

16 Q. Okay.

17 A. They introduced themselves. They talked about their
18 background and their qualifications. They talked
19 about experience that they had in Detroit and in
20 Michigan. They discussed the fact that out of court
21 solutions are absolutely preferred and they talked
22 about their experience in out of court restructuring
23 and they talked about various -- the experience that
24 they had both in out of court restructurings and in
25 court restructurings.

1 Q. Did they say anything about a potential bankruptcy
2 filing by the City of Detroit?

3 A. I don't recall specifically but certainly they
4 indicated a continuum of potential proceeding
5 depending on what transpired prior to the last
6 resort which would be a Chapter 9 filing.

7 Q. That's what they said, they said that would be a
8 last resort?

9 A. I don't recall if they said that specifically but
10 members of our team made it very clear that it was
11 our intent to stay out of the courts.

12 Q. When you say our team who are you referring to?

13 A. Mainly treasury and I think that would be shared by
14 city leadership that were put in place under the
15 consent agreement. C F O and program management
16 director.

17 Q. Okay. Do you recall whether Kevyn Orr spoke at the
18 meeting?

19 A. Yes he did.

20 Q. Do you recall what he said?

21 A. He talked about his background and credentials, he
22 talked about his experience with Chrysler, he talked
23 about his broad restructuring expertise. He talked
24 about his ties to Detroit. His mother was a
25 professor at University of Michigan. He had

1 relatives that continued to have ties in Michigan.
2 He recalled even elements of his education where he
3 spent a fair amount of time in Detroit. It was
4 clear that I was impressed by the facts that he had
5 a passion for the City and I was very impressed by
6 his number both for Michigan and the City from his
7 years as an undergrad and law student.

8 Q. At the meeting did you speak to Mr. Orr one on one.
9 At the meeting or after the meeting. When I say
10 after I mean that day.

11 A. I did not speak -- if you mean one on one did the
12 two of us have a one on one conversation.

13 Q. Right did you break off and have a one on one?

14 A. No, no I did not.

15 Q. Okay. Let me ask you also, did either Jones Day or
16 Mr. Orr at that meeting say anything about Detroit's
17 pensions or pension liability?

18 A. I don't recall.

19 Q. Let me turn your attention to page 41 of Exhibit 1?

20 A. Did I just lose my mic.

21 VIDEO TECHNICIAN: Yeah, you did.

22 THE WITNESS: What page was that 41.

23 BY MR. DeCHIARA:

24 Q. Right and I'd like to draw your attention in
25 particular to the very last line on page 41. I'll

1 read it for the record it says quote if needed,
2 Chapter 9 could be used as a means to further cut
3 back or compromise quote accrued financial benefits
4 end quote under other protected under the Michigan
5 constitution period end quote.

6 Do you recall any spoken statements by the
7 people from Jones Day along the lines of what's --
8 what I just read?

9 A. I do not.

10 Q. Did you get a copy of what's been marked as
11 Exhibit 1?

12 A. I believe I did.

13 Q. And did you after the meeting did you share it with
14 anybody?

15 A. No.

16 Q. Now the day after the meeting, you called Jones Day;
17 isn't that correct?

18 A. I did.

19 Q. Okay. And why did you call Jones Day?

20 A. Specifically I called Steven Brogan the managing
21 partner for Jones Day and I asked him for permission
22 to speak with Kevyn Orr about the potential of an
23 emergency manager position if in fact Detroit were
24 found to be in emergency financial distress and the
25 Governor found it necessary to recommend to the E L

1 B and E M candidate.

2 Q. So you were as of January 30th interested in Mr. Orr
3 as a potential candidate to be E M?

4 A. I was interested in Mr. Orr after seeing him and his
5 background and experience I was very impressed and
6 that's why I made the call the next day.

7 Q. Right but is it fair to say you were interested in
8 him as a potential candidate for E M?

9 A. Yes.

10 Q. And before you made the call, did you speak to the
11 Governor about your interest in Mr. Orr?

12 A. I don't recall. I don't think so.

13 Q. Did you speak to Mr. Dillon?

14 A. Yes.

15 Q. And what did you and Mr. Dillon -- can you recount
16 what you said to Mr. Dillon and what he said to you?

17 A. I spoke to Mr. Dillon at the close of the same day,
18 which according to this was January 29th, and I
19 indicated to him that I was very impressed with
20 Mr. Orr and that I was going to call Mr. Brogan the
21 next day and see if there was any potential that I
22 could talk to Mr. Orr.

23 Q. And what did Mr. Dillon say if anything in response
24 to that?

25 A. My recollection is that he said I don't think you

1 could ever get him but he would be an extremely
2 quality candidate.

3 Q. Okay. Other than the reasons you've already
4 testified to today, are there any other reasons you
5 were interested in Mr. Orr as a potential candidate
6 for E M?

7 A. Yeah. Really two. One is that it was always our
8 intent to see if we could not solve the incredible
9 financial problems by avoiding a Chapter 9 filing
10 and to be honest, it was that meeting where it
11 became clear to me that somebody who knew their way
12 around the courts would actually stand a much better
13 chance of keeping us out of the courts in terms of
14 our negotiations with creditors and other
15 stakeholders.

16 Q. I think you said there were two.

17 A. Yeah.

18 Q. Was that?

19 A. That was one. I'm sorry.

20 Q. What was the second?

21 A. The second one was that he was -- I didn't learn
22 this then but in my first conversation with him, I
23 learned that he was the son of a teacher and he was
24 also the son of a minister and as part of the
25 conversation I had with him going forward I felt

1 that the man's character was exactly what we would
2 be looking for if we could convince him to do this
3 role he'd do it for the right reasons.

4 Q. I'd like to show you a document I'll mark as
5 Exhibit 2.

6 Exhibit 2 marked for identification

7 BY MR. DeCHIARA:

8 Q. And I had a one-page document which is stamped at
9 the bottom J D R D 0000113. Mr. Baird if I can
10 refer your attention to the bottom of Exhibit 2 is
11 that an email you wrote to Corinne Ball on January
12 30th, 2013?

13 A. Yes.

14 Q. And does this refresh your recollection about the
15 date on which you called Steve Broogue an?

16 A. Yes it was the day after this date, yes.

17 Q. Right. So well the email is dated January 30th and
18 the email says in the second sentence was on phone
19 with Steve Brogan. So is it accurate that you
20 called Steve Brogan on January 30th.

21 A. As I testified I called Steven Brogan on January
22 30th.

23 Q. Okay. So the meeting at which Jones Day made a
24 presentation the day before was January 29th?

25 A. Correct.

1 Q. What did Steve Brogan say when you spoke to him?
2 A. Steve said that your killing me, I just asked this
3 man to be the managing partner of our Miami office.
4 He also said we would not stand in the way of
5 anything that any of our partners wanted to do but
6 frankly I think the chances of your getting him
7 would be highly unlikely. With that said, I would
8 give you permission to talk to him.

9 And I made it -- no, I take that back.
10 It's not that I would give you permission to talk to
11 him. I retract that. He said I will talk to him
12 and if there is an interest in him speaking with you
13 I will ask that he call you. At that time I think
14 Steve -- and I told him that I want you to know
15 whether he talks to us or not, you will -- Jones Day
16 will neither be hurt nor helped if there's any
17 further discussions about Kevyn in this particular
18 role.

19 Q. Hurt or helped in what regard?
20 A. With regard to their bid -- potential bid to do work
21 for the City of Detroit.
22 Q. And were you in a position to make that commitment
23 to Jones Day as to what the decisionmaking of the
24 City of Detroit would be?
25 A. Actually, on reflection no.

1 Q. But you made it anyway?

2 A. I did.

3 Q. Okay. Did Mr. Brogan tell you why he thought it was
4 highly unlikely that you'd be able to get Kevyn
5 Orr?

6 A. He said he had two young children a wife who was a
7 surgeon at Johns Hopkins and the fact that he'd just
8 committed to do the Miami deal, and he thought this
9 would be too much of a deviation from those plans.

10 Q. Did you speak to Mr. Orr that day, January 30th,
11 2013?

12 A. I don't recall.

13 Q. Let me show you a document that may help your
14 recollection. I'm going to mark it as Exhibit 3.

15 No. 3 marked for identification

16 BY MR. DeCHIARA:

17 Q. Mr. Baird, is Exhibit 3 an email --

18 A. Well --

19 Q. Well can you identify the top email on Exhibit 3.

20 MR. SHERWOOD: Is this the document 303 at
21 the end.

22 MR. DeCHIARA: Yes. I'm sorry stamped at
23 the bottom J D R D 000303?

24 A. Okay first of all you asked me if I spoke to Kevyn
25 Orr on the same day as I spoke to Steven Brogan.

1 Q. Right?

2 A. I said I did not recall, and according to this email
3 which you've handed me it appears that I spoke to
4 Kevyn Orr the very next day, the 31st.

5 Q. Okay so this refreshes your recollection that you
6 spoke to him the next day?

7 A. Yes.

8 Q. Okay. And what did you -- was it just you and
9 Mr. Orr on the phone when you spoke to him on
10 January 31st, 2013?

11 A. I believe so.

12 Q. And to the best of your recollection tell us what
13 you said and what he said in that discussion?

14 A. I'm going to finish reading this.

15 Q. Sure.

16 A. For a moment.

17 Q. Feel free to do that.

18 A. Okay. Your question?

19 Q. So, apart from the document, although feel free to
20 look at the document, what is your recollection of
21 what you said and what he said in the telephone call
22 you had with him on January 31st?

23 A. My recollection is I told him that we were very
24 impressed with his presentation, I was very
25 impressed with his background and experience, and

1 that I'd asked Steve growing and for permission to
2 talk to him. I said that we did not know whether or
3 not Detroit would have to have an emergency manager
4 recommended and appointed but in the event that such
5 were the case would he under any circumstances be
6 willing to consider I think I called it joining the
7 Governor's irrational act club.

8 Q. What did he say?

9 A. He shut it down pretty summarily and he indicated
10 the reasons I'd already mentioned, that he had young
11 children, you know, his schedule -- the scheduling
12 protocol with the surgeon wife made the situation
13 already difficult. He just agreed to take the Miami
14 job. And he said he really didn't see under any
15 circumstances how this might work.

16 And I said did you talk to your wife about
17 it? He said well no not yet. And I said, well, let
18 me just tell you a little bit about other members of
19 the team, let me tell you a little bit about what
20 we've learned about Detroit, and let me ask if you
21 would at least take a night and sleep on it and talk
22 to your wife about this because frankly this is the
23 kind of a situation that, you know, a lot of people
24 would not be able to step up to, but I firmly think
25 that you are one who could.

1 Q. Was there any discussion in the conversation about a
2 potential filing for bankruptcy by the City of
3 Detroit?

4 A. No, I don't think so.

5 Q. Okay. Let me now show you a document I'll mark as
6 Exhibit 4.

7 No. 4 marked for identification

8 BY MR. DeCHIARA:

9 Q. And for the record, it's one-page document. Exhibit
10 4 is a one-page document stamped at the bottom J D R
11 D 0000327.

12 In the bottom portion of Exhibit 4 there's
13 an email. Mr. Baird is that an email that you wrote
14 to the various people identified in the email?

15 A. Yes, I recall -- I recall writing this.

16 Q. Okay. And it refers, does it not, to a schedule for
17 Mr. Orr to meet with various people on February
18 11th?

19 A. Correct.

20 Q. And it refers to a schedule for a 2:30 p.m. meeting
21 with the Governor and with yourself correct?

22 A. Correct.

23 Q. Did that meeting take place on February 11th?

24 A. I believe it did.

25 Q. And was anyone else present for that meeting other

1 than the three of you, Mr. Orr yourself and the
2 Governor?

3 A. No.

4 Q. And do you recall what was discussed in that
5 meeting?

6 A. Kevyn's background was discussed, the Governor's
7 passion and commitment for Detroit was discussed. A
8 fair amount of discussion around the two of them in
9 their law school experiences being a year apart was
10 discussed, and that's -- again, most of it was spent
11 talking about Kevyn and his background and
12 experience and some was reminiscing about Michigan
13 law school days.

14 Q. Was there any discussion of a potential bankruptcy
15 filing by the City of Detroit?

16 A. I don't recall; however, in the process of talking
17 with Kevyn it would have been -- we would have
18 discussed the fact that we need to do everything
19 possible to fix the problem and the courts should be
20 avoided but if they can't be avoided, then it would
21 have been -- it would have been misleading to
22 suggest that that wasn't a possibility.

23 Q. When you say -- who is the we in that sentence?

24 A. Well you asked me about a specific meeting. It
25 would have been Governor Snyder and me.

1 Q. So it's the two -- the Governor and yourself who
2 were saying what you just said in the prior
3 sentence?

4 A. Yes.

5 Q. In your prior answer.

6 A. Yes.

7 Q. Okay.

8 A. You have to understand, in general, it's difficult
9 to talk about the financial way forward and the
10 operating way forward for Detroit without
11 contemplating all of the avenues of rescue
12 available. Restructuring is clearly the optimum.
13 But in the absence of proper movement or ability to
14 negotiate, you can't have a discussion about the
15 future without looking at all of the options, and of
16 course the actual discussion with Kevyn at this
17 point was simply an option because we didn't know if
18 the review would ultimately find Detroit in a state
19 of emergency at this point. What we did know by
20 this point is that there were several areas under
21 the consent agreement that were falling short of
22 what had been agreed.

23 Q. In the February 11th meeting with you and the
24 Governor and Mr. Orr, did any of the three of you
25 talk about pensions or pension liability of Detroit?

- 1 A. No I don't believe so.
- 2 Q. Did you have meetings or discussions with Mr. Orr
3 between the -- well, actually let me back up.
4 Was the January 31 telephone call that you
5 had with Mr. Orr the first time you had a
6 conversation with him?
- 7 A. Except for the public back and forth on the 29th.
- 8 Q. Okay. So between the 31st of January and this
9 February 11th meeting did you have additional
10 discussions with Mr. Orr?
- 11 A. I don't recall explicitly but I'm sure that I did.
- 12 Q. Okay. Do you recall whether in any of those
13 discussions you talked about Detroit's pensions or
14 pension liability?
- 15 A. I don't believe so.
- 16 Q. Okay. Did you talk about the prospect of or a
17 possibility of Detroit filing for bankruptcy?
- 18 A. I don't recall.
- 19 Q. Now, Mr. Orr was appointed as E M, correct?
- 20 A. He was recommended by the Governor to the emergency
21 loan board and the emergency loan board appointed
22 him as E M, yes.
- 23 Q. And do you know the date that that appointment
24 became effective?
- 25 A. I don't remember the exact date. It was around mid

1 March.

2 Q. Now, is it correct that before Mr. Orr was appointed
3 as E M, emergency manager, he had earlier been
4 appointed under a prior statute, P A 72, as the E F
5 M, the emergency financial manager?

6 A. I think that is correct.

7 Q. And when did -- when did he become -- when was he
8 appointed as E F M?

9 A. I don't recall the exact date.

10 Q. Do you recall the ballpark in relation to mid March?
11 Was it -- actually let me strike that.

12 In relation to the mid March effective date
13 of Mr. Orr's appointment as E M, was his appointment
14 as E F M days before or weeks before, do you have
15 some order of magnitude?

16 A. My recollection is it was days before P A 72 was in
17 effect when he was appointed and then 436 came into
18 effect I think a matter of days thereafter.

19 Q. Okay. So he was -- is it fair to say he was
20 appointed as E F M in early to mid March?

21 A. Again, I remember mid March. That's all I remember.

22 Q. Okay. I'd like to show you a document I'll mark as
23 exhibit 5.

24 Exhibit No. 5 marked for identification

25 BY MR. DeCHIARA:

1 Q. And for the record I'll identify it as a three-page
2 document that stamped at the bottom, the stamp on
3 the first page is J D R D 0000216.

4 MR. WERTHEIMER: That's five you said.

5 MR. DeCHIARA: Yes.

6 BY MR. DeCHIARA:

7 Q. Mr. Baird, if you could look at the email at the
8 bottom half of Exhibit 5. If you want to take the
9 time to look at the whole document, why don't you do
10 that?

11 A. Well, I'll let you know if I need to.

12 Q. All right.

13 A. I recall the document.

14 Q. Okay. All right. So is it accurate that the email
15 at the bottom of Exhibit 5 is an email that you
16 wrote to Kevyn Orr on February 20th, 2013?

17 A. I believe so.

18 Q. What were you -- what was the reference in the first
19 sentence to the summary of partnership?

20 A. Mayor Bing crafted a document that he described as a
21 working arrangement or working partnership or
22 something, I forget exactly -- summary of
23 partnership perhaps is what he called it, and he
24 gave that to me in a meeting. We discussed it. I
25 told him that if in fact there was to be an

1 emergency manager for Detroit, that this would be
2 something that he or she would have to review.

3 I also said that this would be a good
4 aspirational document but that it would be imprudent
5 to bind a future emergency manager to something that
6 he or she had not developed.

7 Q. Had the emergency manager at that point been chosen?

8 A. No.

9 Q. Let me refer you to the second -- the second
10 sentence of your email. It says quote told him that
11 there were certain things I would not think we could
12 agree to without your review, assessment and
13 determination, open parens, such as keeping the
14 executive team in its entirety, closed parens,
15 period?

16 A. Uh-huh.

17 Q. Now, the you in that -- the your in that sentence
18 refers to Mr. Orr, correct?

19 A. Correct.

20 Q. So is it -- am I reading this correctly that what
21 you're saying to Mr. Orr in this sentence is that
22 unless Mr. Orr agreed to certain things that you
23 spell out in this sentence -- or that you were
24 saying that Mr. Orr's agreement to certain things
25 that you refer to in this sentence were necessary.

1 A. No. I don't think that would be correct.

2 What I intended is that Kevyn Orr had not
3 yet agreed if recommended to serve in this capacity.
4 He was still doing his own due diligence determining
5 if he could separate from his firm, a number of
6 other issues. What he did say to me is that if he
7 were in fact to go forward it would be important to
8 him that he have a working relationship with the
9 mayor, and that's actually where this document came
10 from because I'd mentioned to the mayor that that
11 would be important. At this point, the mayor didn't
12 know who Kevyn Orr was.

13 So the purpose of writing this to Kevyn was
14 that so he could have an understanding of where the
15 mayor's thought process was and so that he could use
16 this information in the event that he and the mayor
17 met, which we had been discussing doing because of
18 the fact that he wanted a strong working
19 relationship with the mayor.

20 Q. Okay. In the sentence it's -- I'll quote part of
21 the sentence. It says I would not think we could
22 agree to without your review assessment and
23 determination. Who is the we in that sentence?

24 A. I think I used a poor choice of words. I was
25 referring to myself, looking at this, and having

1 some difficulty with a few of the issues here. And
2 so I think the we would be certainly me and I may
3 have been thinking at the time of what I thought the
4 chief of staff and/or the Governor might be
5 thinking. But I don't recall who my we was other
6 than me.

7 Q. Let me read the third sentence. It says quote will
8 broker a meeting via note between you and the
9 mayor's personal assistant who is not FOIAble.
10 That's F O I A, b, l, e period end quote.

11 A. Uh-huh.

12 Q. Did you attempt to broker a meeting -- did you
13 broker a meeting between Mr. Orr and the mayor's
14 personal assistant?

15 A. I brokered a connection via note.

16 Q. And when did you do that?

17 A. I don't recall but it would have been fairly soon
18 after this.

19 Q. Okay. And can you explain what you mean by broker a
20 meeting by a note?

21 A. That I would introduce them to one another, provide
22 their contact information and step back and ask them
23 to work out when and where they would meet to
24 determine the kind of relationship they might seek
25 to have.

1 Q. Were there other candidates for E M who were still
2 being considered as of February 20th, 2013?

3 A. Yes.

4 Q. Did you broker a meeting between the mayor's
5 personal assistant and those other candidates?

6 A. No.

7 Q. Did you write an email similar to this one to the
8 other candidates where you said I would not think we
9 could agree to without your review assessment and
10 determination?

11 A. No.

12 Q. Do you know whether Mr. Bing -- I'm sorry, Mr. Orr
13 met with the mayor's personal assistant?

14 A. I don't know.

15 Q. Okay. What did you mean by the phrase who is not
16 FOIAble?

17 A. The mayor and Kevyn wished to meet privately and so
18 the person who was going to set that up was someone
19 the mayor had recommended set it up because she, I
20 believe, was not a city employee.

21 Q. Oh so the mayor's personal assistant was not a city
22 employee?

23 A. I believe when I said personal it was personal
24 assistant.

25 Q. And why did you tell Mr. Orr in this email that the

1 personal assistant was not FOIAble?

2 A. Because it was my understanding she was not a city
3 employee.

4 Q. Why did you think that was something -- that she was
5 not FOIAble? Why did you think that was something
6 worth mentioning to Mr. Orr in this email. What did
7 it matter?

8 A. Because the mayor wished for a private meeting not a
9 meeting that would be publicly disclosed.

10 Q. Did Mr. Orr say anything about whether he want a
11 private meeting?

12 A. I don't recall. He said he wanted a meeting. I
13 don't recall him saying he wanted a private meeting.

14 Q. Okay. So who was it that wanted the meeting or was
15 it both? The mayor or Mr. Orr?

16 A. Mayor Bing wanted to meet the potential candidate
17 and Mr. Orr wanted to assess a potential working
18 relationship with Mayor Bing as one of the
19 conditions for success in the event he accepted the
20 recommendation.

21 Q. How did Mr. Bing know that Mr. Orr was a candidate?

22 A. I told him.

23 Q. Okay. Did you tell him who the other candidates
24 were?

25 A. No. And I didn't tell him Mr. Orr's name until such

1 time as he -- the two of them expressed a desire to
2 meet.

3 Q. Okay. I'd like to mark as Exhibit 6 another
4 document which I'll have the court reporter show
5 you.

6 Exhibit 6 marked for identification

7 BY MR. DeCHIARA:

8 Q. And for the record I'll identify it as a multi page
9 document, the first page is stamped at the bottom J
10 D R D 0000459.

11 Mr. Baird let me refer your attention to
12 the email that's in the middle of the first page of
13 Exhibit 6. Is that an email that you wrote to Kevyn
14 Orr on February 22nd, 2013?

15 A. Is that the one timed 11:35 a.m.

16 Q. I'm looking at the one that says 11:41 a.m.

17 That's sort of smack in the middle. Or at
18 least the date code is sort of right in the middle
19 of --

20 A. Yes, I believe I sent that.

21 Q. Okay. And do you recall this email?

22 A. Vaguely I recall it.

23 Q. It says quote, Kevyn, about to be in a car for
24 several hours so I thought I would send this to you
25 prior to hearing back from the G a final time end

1 quote the G is the Governor?

2 A. Yes.

3 Q. Okay. And then it continues quote if you agree with
4 what I have done to the doc based on everyone's
5 input, and agree that you should be the one to
6 provide it to the mayor as fully endorsed by the
7 Governor and the treasurer parens open parens and
8 you closed parens comma then I think that clearly
9 establishes that you are already behaving as an
10 agent of the state committed to getting Detroit back
11 on track end quote.

12 What was the doc -- and I assume that was
13 short for document?

14 A. Yes.

15 Q. What was the document you were referring to?

16 A. It would have been the summary of partnership that
17 the original draft had been provided by Mayor Bing.

18 Q. Okay. So you were showing in this email you were
19 showing Mr. Orr certain modifications you had made
20 to the document; is that correct?

21 A. Yes.

22 Q. And were you looking for his input?

23 A. I was looking for input and/or agreement.

24 Q. From Mr. Orr?

25 A. Yes.

1 Q. Okay. Did you -- this is two days after the
2 document we were discussing in exhibit 5.

3 Were there still other candidates for the E
4 M position as of February 22nd, 2013?

5 A. There was one other candidate.

6 Q. Okay. Did you send that other candidate an email
7 like this looking for the other candidate's input
8 and agreement to the document you refer to in
9 Exhibit 6?

10 A. No.

11 Q. Okay. Did Mr. Orr give you his input and/or
12 agreement?

13 A. I believe he did.

14 Q. Okay. And did his giving the input or agreement
15 clearly establish to you that he was already
16 behaving as an agent of the state?

17 A. No the use of the term agent of the state was my
18 attempt at continuing the recruiting pressure on
19 Kevyn Orr because he was clearly not an agent of the
20 state.

21 Q. But nonetheless you wrote to him saying that if he
22 did what you were asking he -- that would clearly
23 establish that he was already behaving as an agent
24 of the state. Am I reading what you wrote there
25 correctly?

1 A. The man had not formally committed to the role and I
2 was attempting to recruit him. And it was in that
3 context that I put that statement which now would
4 appear to be a little presumptuous on my part.

5 Q. Just to be clear at this point Mr. Orr was still a
6 partner at the Jones Day law firm?

7 A. I believe so.

8 Q. Okay. Well in fact he didn't cease to be a partner
9 until he became E F M is that correct?

10 A. I never saw his withdrawal from the partnership, so
11 you'd have to talk to them about that.

12 Q. Okay. Do you have a general understanding about
13 when he severed his ties with the firm?

14 A. My understanding is he was no longer a partner when
15 he became the E M.

16 Q. Was he partner when he became the E F M?

17 A. No. Well I don't know but my understanding was that
18 he was not.

19 Q. Are you familiar with a provision of the Michigan
20 State constitution Article 9 Section 24 that refers
21 to pensions?

22 A. I am.

23 Q. What's your understanding of that provision?

24 A. Would you like to read it?

25 Q. No, I just want to know what your general

1 understanding is of the provision?

2 A. Well I'm not an attorney, so I'm not going to give a
3 legal interpretation.

4 Q. And just for the record I'm not seeking one?

5 A. Okay. Good.

6 Q. But you do have some idea what the provision is
7 about?

8 A. I've read the provision.

9 Q. Okay what's your understanding of it?

10 A. My understanding of it is that the constitution
11 protects pensions to the extent that they are fully
12 accrued and then they can not be altered.

13 There is some degree of difference of
14 opinion about whether a fully funded pension has the
15 same protection under the constitution as one that
16 is not fully funded.

17 Q. And do you have a view on that subject?

18 A. No.

19 Q. Have you ever discussed Article 9 Section 24 with
20 anybody?

21 A. Yes.

22 Q. With whom have you discussed it?

23 A. I don't recall. Various people.

24 Q. Have you ever discussed it with Kevyn Orr?

25 A. Yes.

1 Q. And on one occasion or more than one occasion?

2 A. One occasion.

3 Q. What occasion was that?

4 A. It was early on in our conversation where I
5 indicated to him that I was aware of the existence
6 of the article and that he should be aware of it as
7 well. He said he was aware of it. And that was our
8 discussion.

9 Q. And was this -- can you locate this conversation in
10 time? Was it, for example, before the February 11th
11 meeting that you and Mr. Orr and the Governor had?

12 A. No, sir, I can't. During the course of a
13 recruitment you cover an awful lot of ground and you
14 answer a lot of questions and you raise lots of
15 issues. And you do the best you can to help an
16 individual get to the best answer as it relates to
17 an opportunity like this.

18 Q. Okay. Was it -- the conversation before Mr. Orr
19 became E M?

20 A. Yes. I believe it was.

21 Q. It was while you were recruiting him correct?

22 A. Yes.

23 Q. Okay. So you just so I understand, you on one
24 occasion brought up to him, Mr. Orr, the subject of
25 Article 9 Section 24?

1 A. I brought up to him the fact that the Michigan
2 constitution has a provision as it relates to
3 pensions. And he should be aware of it.

4 Q. And what did he respond?

5 A. He said he was aware of it.

6 Q. Did you have any further discussion about Article 9
7 Section 24?

8 A. No.

9 Q. Okay. Other than Mr. Orr -- well strike that.

10 Did you ever speak to the Governor about
11 Article 9 Section 24?

12 MR. ELLSWORTH: Object to the extent this
13 it may call for a lawyer client privileged
14 information.

15 MR. DeCHIARA: Okay I'm going to modify my
16 question to ask you to exclude occasions on which
17 you spoke to the Governor in the presence of
18 counsel?

19 A. The answer would be no.

20 BY MR. DeCHIARA:

21 Q. Did you ever speak to Mr. Dillon about Article 9
22 Section 24 with the same caveat as to not in front
23 of counsel?

24 A. I don't think so.

25 Q. Do you recall speaking to anyone at Jones Day about

1 article 29, -- Article 9 Section 24 of the Michigan
2 constitution?

3 MR. ELLSWORTH: Same objection.

4 MR. DeCHIARA: Okay.

5 BY MR. DeCHIARA:

6 Q. Let me modify it to say before Jones Day was
7 retained by the City. Did you speak to anyone at
8 Jones Day about Article 9 Section 24?

9 A. No I don't believe so.

10 Q. Did you ever speak to the Attorney General of the
11 state of Michigan about Article 9 Section 24?

12 A. No.

13 MR. ELLSWORTH: Objection attorney-client.

14 BY MR. DeCHIARA:

15 Q. Did you ever speak to Mr. Orr about what could or
16 should be done about Detroit's pension liability?

17 A. No.

18 Q. Outside of the presence of counsel, did you ever
19 have a discussion on that subject with the Governor?

20 A. No.

21 Q. What about with Mr. Dillon?

22 A. No.

23 Q. What about with anyone else on the staff of Mr. Orr
24 or on the staff of the Governor or the staff of
25 Mr. Dillon again outside the presence of counsel?

1 A. I recall one conversation where I requested some
2 analytics on the distribution of pensioner income,
3 so instead of dealing with averages I could see the
4 distribution between those at the low end those at
5 the high end and where it all fell so I could at
6 least have some understanding of what any impact
7 would be in the event of pension reduction.

8 Q. Who did you have that conversation with?

9 A. I know I had it with Kevyn Orr once and I believe I
10 had it with Andy Dillon once.

11 Q. When was your conversation with Mr. Orr on the
12 subject?

13 A. It would have been after he was the emergency
14 manager but I don't recall how long he'd been in
15 that role.

16 Q. Okay was it before the bankruptcy filing?

17 A. I don't believe so.

18 Q. You think it was after the bankruptcy filing?

19 A. I think it was.

20 Q. Okay. And did you say that you requested data on
21 pensions from somebody?

22 A. I requested data on whether the data existed on the
23 distribution by pension amount, numbers of
24 pensioners and pension amount for the current
25 roughly 20,000 pensioners.

1 Q. And who -- did you ask Mr. Orr for this data?

2 A. I asked Mr. Orr to see if the data could be obtained
3 because I thought it was relevant.

4 Q. And what would it be relevant to in your -- why did
5 you think it was relevant?

6 A. At the time I was wondering if it was possible for
7 the state to consider legislation that would provide
8 incremental safety net to those at the lower end of
9 the spectrum.

10 Q. And you said you thought that was relevant. What
11 did you think it was relevant to?

12 A. Well it was relevant to a question I had and I
13 didn't know the answer so I asked to get the data.

14 Q. What was the question you had?

15 A. My question was whether or not there were other
16 avenues to provide relief to those pensioners that
17 conceivably could be impacted at the lower end of
18 the continuum. And that was not based on
19 discussions with anybody else. It was simply a
20 question that I had because I didn't know the
21 answer.

22 Q. And the question you had, when you say the person --
23 the pensioners who would be impacted, were you
24 thinking impacted in that their accrued pension
25 benefits might be reduced?

- 1 A. Yes.
- 2 Q. And did Mr. Orr provide you the data you requested?
- 3 A. No.
- 4 Q. Did he -- when you asked him for it, what did he
5 say, if anything?
- 6 A. He said it was a good question and he'd get back to
7 me. But to the best of my recollection he didn't.
- 8 Q. Did you ever follow up?
- 9 A. I honestly can't remember.
- 10 Q. Okay. Did he say anything other than it's a good
11 question?
- 12 A. Nope.
- 13 Q. You said you had a conversation with Andy Dillon on
14 the same subject. When was your conversation with
15 him on this subject?
- 16 A. It would have been about the same time. This was
17 after the bankruptcy had already been filed and
18 there was a lot of noise about whether pensions
19 would be impacted and I was trying to ascertain the
20 practical implications if they were.
- 21 Q. And did you ask Mr. Dillon for the data on the
22 distribution of the number of pensioners and?
- 23 A. No.
- 24 Q. The amount of pensions?
- 25 A. No I asked -- I actually told him that I'd ask Kevyn

1 -- that I had made that question to Kevyn.

2 Q. Did Mr. Dillon say anything in response to when you
3 told him that?

4 A. Good question.

5 Q. Did he ever -- did he or anyone on his staff ever
6 get back to you with the data you were looking for?

7 A. Not that I recall.

8 Q. Did you speak to anyone about your idea to have
9 legislation that would provide an incremental safety
10 net for the people on the low end of the spectrum?

11 A. I spoke with Dennis Muchmore about it the Governor's
12 chief of staff and he's the only one.

13 Q. And what did he say, if anything?

14 A. He didn't know. He said I don't know what the
15 appetite for that would be but it's a good question.

16 Q. Now, were you when you spoke to Mr. Muchmore were
17 you proposing that Mr. -- or take steps to see if
18 such legislation could be enacted?

19 A. No I was asking a question about in the event of
20 pensions were impacted what is the practical
21 implication to those depending on the money every
22 month. I wanted to know.

23 Q. And do you know now as you sit here today. Have you
24 ever seen that data?

25 A. No I have not.

1 Q. Did you speak to Mr. Muchmore about the idea of the
2 legislation you described?

3 A. I asked him the question what do you think the
4 appetite would be and he had said he didn't know.

5 Q. Okay. Do you know whether there had been any
6 discussions by the Governor and his staff about the
7 legislation you described?

8 A. No, I don't.

9 Q. Have you ever followed up?

10 A. Not on that, no.

11 Q. Do you have any sense without having seen the data
12 of what the practical impact would be on the
13 individuals at the low end of the spectrum if their
14 accrued pension benefits had been reduced.

15 A. Only anecdotal knowledge. Anecdotal knowledge are
16 that the majority of the pensioners are at the lower
17 end the spectrum so the implications of a pension
18 reduction probably couldn't be directed toward the
19 higher end of the spectrum at a sufficient level to
20 make it feasible.

21 Q. So your understanding is that -- to make what
22 feasible?

23 A. Let me back up. I'm a numbers guy. I wanted to
24 know of the 20,000 pensioners that exist where do
25 they fall along a distribution continuum. What I

1 was looking to see is whether the distribution, the
2 standard deviation was such that if there was a
3 reduction that the number -- would the numbers be
4 material if that reduction were weighted toward the
5 larger pension earners versus the lower pension
6 earners. And anecdotally I was told that the number
7 of pension earners are at the lower end and that the
8 standard deviation is not very great.

9 Q. So in order for there to be a meaningful savings by
10 the City if it reduced pensions it would have to
11 reduce the pensions of many of those people who are
12 at the low end of the spectrum. Am I understanding
13 that correctly?

14 A. Anecdotally that's my understanding.

15 Q. Did you have any sense, anecdotally or otherwise, of
16 what the real world impact would be on those
17 individuals of the low end of the spectrum if their
18 pensions were reduced?

19 A. No, because the data never materialized for me.

20 Q. Do you have any sense whether if pensions of those
21 people at the low end the spectrum were reduced it
22 would be difficult for those individuals to make
23 ends meet?

24 A. I don't know.

25 MR. ELLSWORTH: I wasn't sure he heard your

1 question because he was retrieving his microphone.

2 BY MR. DeCHIARA:

3 Q. Did you hear my question?

4 A. Would you repeat it.

5 Q. Do you have any sense whether if the pensions of
6 those people at the low end of the spectrum were
7 reduced would it be difficult for those individuals
8 to make ends meet?

9 A. I would have no way of knowing in the absence of
10 real data.

11 Q. Your are you familiar with a letter that the
12 Governor signed on July 18th, 2013 in which he
13 purported to authorize the filing of the bankruptcy
14 of the City of Detroit?

15 A. I know that that letter existed.

16 Q. Okay. Did you see the letter in any draft or
17 nonfinal forms before the Governor signed it?

18 A. No.

19 Q. Did you participate in any way in the preparation of
20 that letter?

21 A. No.

22 Q. Did the Governor speak to you about the preparation
23 of that letter?

24 A. No.

25 Q. Did he speak to you about the contents of the letter

1 before he signed the letter?

2 A. No.

3 Q. Did you have anything at all to do with that letter?

4 A. No.

5 Q. Okay. You're aware are you not that a couple days
6 before the Governor signed that letter that Mr. Orr
7 had sent the Governor a letter in which Mr. Orr
8 requested permission to file for bankruptcy, right?

9 A. I am aware. I don't recall having seen that letter
10 but I am aware one was sent.

11 Q. Have you ever seen that letter?

12 A. I don't think so.

13 Q. Did Mr. Orr ever speak to you about that letter
14 before he sent it?

15 A. He spoke to me, yes.

16 Q. And was it on one or more than one occasion?

17 A. No just on one occasion.

18 Q. Let me represent to you the letter was dated July
19 16th, 2013.

20 When did you speak to Mr. Orr about the
21 letter?

22 A. I don't recall but it would have been very near when
23 it was sent.

24 Q. Near before or near after?

25 A. Maybe right at the time it was sent. I recall a

1 conversation with Kevyn where he said I'm going to
2 do this.

3 Q. Okay. What else if anything do you recall about
4 that conversation?

5 A. The reason I recall it is because he had asked me to
6 circle back to members of the consulting
7 restructuring team to talk to them about their scope
8 and service and fees because these were
9 conversations he had plan to have but hadn't had a
10 chance. And so I did that.

11 Q. So about the time that -- I just want to see if I'm
12 understanding your testimony.

13 About the time that Mr. Orr sent his July
14 16th letter to the Governor requesting permission to
15 file for bankruptcy, he spoke to you about the
16 letter?

17 A. I believe he did.

18 Q. Okay. Did he call you?

19 A. I don't recall.

20 Q. Did he initiate the contact?

21 A. I don't recall.

22 Q. Was it a face to face meeting or a telephone call?

23 A. I believe it was telephone.

24 Q. And to the best of your recollection, can you
25 recount what you said and what he said in that

1 telephone call?

2 A. I honestly don't recall other than he said I haven't
3 completed my conversations with the restructuring
4 team relative to their scope and services and fee
5 projections, and I agreed to do that on his behalf.

6 Q. Who was the restructuring team?

7 A. These would have been the principals associated with
8 Conway Mick Ken see Ernst and young Jones Day and
9 miller buck fire.

10 Q. And Mr. Orr said he wanted to complete a
11 conversation with those individuals you just
12 mentioned about their fees?

13 A. Yeah, he had been engaged with them around putting a
14 fine point on their fee estimates as opposed to a
15 broad, you know, sort of broad here's what we think
16 it might cost but he hadn't had the detailed
17 discussions. So he asked if I would do that.

18 Q. And did you do that?

19 A. I did.

20 Q. And what, if anything, did that have to do with the
21 July 16th letter that Mr. Orr sent to the Governor
22 to request permission to file for bankruptcy?

23 A. I think it was important because the fees and the
24 scope once the filing had been completed would not
25 have been subject to much in the way of reduction.

1 Q. Did you have any other -- was that the extent of
2 your conversation with Mr. Orr on that occasion?

3 A. Yes.

4 Q. And did you have any other discussions with Mr. Orr
5 about his July 16th letter before he sent the
6 letter?

7 A. No.

8 Q. Do you -- are you aware that in the Governor's
9 letter, the July 18th 2013 letter, the Governor said
10 that he was not going to impose contingencies on the
11 filing? Are you familiar with that.

12 A. No I don't recall actually ever having seen the
13 letter.

14 Q. Okay. Are you aware that there were certain state
15 court lawsuits that were filed prior to the
16 bankruptcy filing concerning issues related to
17 article 29 Section 24 of the Michigan constitution?

18 MR. WERTHEIMER: Article 9.

19 MR. DeCHIARA: Thank you Article 9
20 Section 24 of the Michigan constitution?

21 A. No.

22 Q. Did you ever discuss with the Governor the timing of
23 the bankruptcy filing, meaning outside of the scope
24 of counsel, did you ever discuss with the Governor
25 when it would be best to for the City of Detroit to

1 file for bankruptcy?

2 A. No.

3 Q. Are you aware that the state or at least the
4 Governor's office had prepared a schedule that
5 indicated that the bankruptcy filing was to occur on
6 July 19th, 2013 but it actually occurred the prior
7 day? Are you aware of that?

8 A. I'm aware of a communications schedule that had the
9 19th I think as the date.

10 Q. And are you aware that the filing actually occurred
11 the day before?

12 A. I was aware the filing when it occurred which
13 occurred the day before.

14 Q. Okay. Do you have any understanding or knowledge as
15 to why it occurred the day before it had been
16 planned to occur?

17 A. No.

18 Q. Did you ever outside of the presence of legal
19 counsel did you ever discuss that with the Governor?

20 A. No.

21 Q. Okay. Did you speak with the Governor outside of
22 the presence of legal counsel since he had his
23 deposition taken yesterday?

24 A. Yes.

25 Q. Did you speak about his deposition?

1 A. No.

2 Q. I'd like to show you a document -- well, are you
3 aware of a document that Mr. Orr presented to
4 creditors on January 14th, 2013 called?

5 MR. WERTHEIMER: June 14th.

6 MR. DeCHIARA: Thank you, June 14th, 2013
7 can called proposal for creditors?

8 A. May I see it?

9 Q. Yes.

10 A. Yes, I am familiar with this document.

11 Q. Okay. And did you participate in its preparation?

12 A. No.

13 Q. Did you comment on it before it was in its final
14 form?

15 A. No.

16 Q. Were you asked to review it before it was made
17 final?

18 A. No. Well, not that I recall.

19 Q. Not that you recall?

20 A. Yeah. If somebody asked me it's an email I never
21 saw because I didn't review it.

22 Q. Okay. Okay. Did you speak to the Governor outside
23 of the presence of legal counsel about the June
24 14th, 2013 proposal?

25 A. I don't believe so.

1 Q. Did you speak to Mr. Dillon?

2 A. Yes.

3 Q. Outside of the presence of legal counsel about the
4 June 14th, 2013 proposal?

5 A. No.

6 Q. You spoke to him but it was in the presence of legal
7 counsel?

8 A. Yes.

9 Q. Okay. Did you speak to anyone on the Governor's
10 staff or Mr. Dillon's staff outside of legal counsel
11 about the June 14th, 2013 proposal?

12 A. No.

13 Q. Did you speak to Mr. Orr about his proposal at any
14 time on or before June 14th, 2013?

15 A. No.

16 Q. Did you speak to him about -- did you speak it
17 Mr. Orr outside of the presence of legal counsel
18 about the proposal after June 14th, 2013?

19 A. I attended that meeting and told him I thought he
20 did a good job in its presentation.

21 Q. By that meeting you mean the June 14th 2013 meeting?

22 A. Yes.

23 Q. Okay. Do you recall Mr. Orr at the June 14th 2013
24 meeting saying words to the effect to the people who
25 were in attendance that this was not a negotiation?

1 A. No.

2 Q. Are you denying he said it or you just don't
3 remember if he said it or not?

4 A. I don't recall him using those words.

5 Q. Okay. Is it true that those in attendance on June
6 14th 2013 in order to be able to speak had to fill
7 out a card and have the card read by someone?

8 A. I don't know.

9 Q. I'd like to show you a document which I'll mark as
10 Exhibit 7.

11 No. 7 marked for identification

12 BY MR. DeCHIARA:

13 Q. For the record it's a one-page document stamped at
14 the bottom S O M 20003601.

15 MR. WERTHEIMER: 7?

16 MR. DeCHIARA: Yes.

17 BY MR. DeCHIARA:

18 Q. Do you recall receiving this email from Mr. Dillon
19 on July 18th -- on July 8th, 2013?

20 A. Let me just finish reading it.

21 Q. Please.

22 A. I believe I've seen this before, yes.

23 Q. In the first sentence Mr. Dillon refers to the
24 Detroit consultants. Do you know who he's referring
25 to?

1 A. No. I mean, when he says weekly call with the
2 Detroit consultants, that generally includes Jones
3 Day, miller buck fire, earns and young, Conway Mick
4 Ken see and at times Milliman.

5 Q. In the second paragraph it says quote we met with
6 the consultants to get briefed on the pension issue
7 this afternoon period. I invited Baird and Tedder
8 to join, period end quote.

9 Did you join that briefing?

10 A. I don't believe so but I don't recall.

11 Q. Next sentence says quote, bottom line, the situation
12 is not good and the view of the consultants is that
13 current pensions have to be cut significantly,
14 period end quote.

15 Did you have any conversations with
16 Mr. Dillon about that view that current pensions
17 have to be cut significantly outside of the presence
18 of legal counsel?

19 A. I don't recall. I've had -- I have had discussions
20 with Andy relative to the funding levels of pensions
21 and have had discussions with him about the 13th
22 check but you do not recall a specific discussion
23 around the pensions have to be cut significantly.

24 Q. Do you have a view yourself or strike that.

25 As of the time of this email, July 8th,

1 2013, at that period of time did you have a view
2 yourself as to whether current pensions had to be
3 cut significantly?

4 A. My view of what's been reported publicly is that the
5 pension funding is not sustainable for the current
6 obligations. And future obligations.

7 Q. What do you mean the pension funding?

8 A. The funding level of the pension -- the pension
9 funds.

10 Q. When you say the funding do you mean the
11 contributions that are being made are not
12 sufficient.

13 A. That's correct.

14 Q. Okay. And have you -- and therefore is it your view
15 because the funding is insufficient that the
16 pensions that are being paid out of the funds need
17 to be cut significantly?

18 A. I'm not an actuary and I don't know the answer to
19 that question.

20 Q. But do you have a view on that question or an
21 opinion?

22 A. I have an opinion.

23 Q. What's your opinion?

24 A. My opinion is that under funded -- significantly
25 under funded pensions are not sustainable long-term

1 for current workers or for workers who are more than
2 just a few years away from retirement.

3 Q. Therefore is it your view that the Detroit pension
4 accrued pension liabilities need to be reduced?

5 A. No, it's my view that there's not enough money for
6 the current pension obligations and the future
7 pension obligations. It's not my call whether they
8 get reduced or not.

9 Q. Well whether it's your call or not, I'm just asking
10 do you have a view as to whether or not --

11 A. My view --

12 MR. ELLSWORTH: I object to the form and
13 he's already answered the question.

14 BY MR. DeCHIARA:

15 Q. Can you answer the question Mr. Baird? Do you have
16 a personal view as to whether or not Detroit's
17 accrued pension liabilities need to be reduced?

18 A. My view is that if the pensions are under funded
19 that there will come a time when the obligations
20 cannot be met, and you can't create money out of
21 nothing. It's not my place to ascertain where the
22 money comes from. It is my place to say to you I
23 have an opinion that the current pension funds are
24 not sustainable in the current model.

25 Q. Okay. But you're aware are you not that whether or

1 not -- the question of whether or not the Detroit's
2 pension liabilities should be cut is a matter that's
3 been -- a matter of sharp debate in Detroit over the
4 course of the last few months?

5 A. I'm aware there's been a lot of debate around this
6 issue.

7 Q. Okay. And have you ever spoken to the Governor
8 outside of the presence of legal counsel about this
9 issue about this debate?

10 A. Not that I recall.

11 Q. Okay. Have you ever spoken to anyone on the
12 Governor's staff outside of legal counsel on this --
13 about this debate?

14 A. Not that I recall.

15 Q. Same question for Mr. Dillon and Mr. Dillon's staff.

16 A. Generally speaking, I know we've had discussions but
17 nothing explicit or a course of action forward.

18 Q. What's your best recollection of the discussions
19 you've had with Mr. Dillon?

20 A. Very --

21 Q. Outside of the presence of legal counsel?

22 A. Very general discussions around the sustainability
23 of the current model and whether it can survive.

24 Q. Did Mr. Dillon ever say to you words to the effect
25 that he believed that the pension liabilities of the

1 City of Detroit need to be reduced?

2 A. No, I don't recall him ever saying that. I recall
3 him saying that the issues are significant.

4 Q. Have you ever spoken to Mr. Orr or his -- anyone on
5 his staff outside the presence of legal counsel
6 about this subject?

7 A. No.

8 Q. I'd like to show you a document I'll mark as exhibit
9 8.

10 Exhibit 8 marked for identification

11 MR. SHERWOOD: What's the bates number?

12 BY MR. DeCHIARA:

13 Q. It's a one-page document that's stamped S O M
14 20003657,

15 A. Okay.

16 Q. Do you recall receiving this email from Andy Dillon
17 on July 9th, 2013?

18 A. No.

19 Q. Have you ever seen this email before?

20 A. I don't recall seeing this email before. I get
21 hundreds of emails every day and I don't look at all
22 of them.

23 Q. If you look at the second paragraph of the email,
24 let me just read it. It says quote on Thursday, we
25 expect to receive financials that will help us

1 better understand the potential negative impact on
2 pensions and what options may be available to us to
3 avoid them period end quote?

4 A. Uh-huh.

5 Q. Did you ever speak to Mr. Dillon outside of the
6 presence of legal counsel about what options might
7 be available to avoid the potential negative impact
8 on pensions?

9 A. No.

10 Q. Let me read the last sentence of the email it says
11 quote I have some thoughts as to how you could
12 address some pointed questions if you were
13 interested in hearing them, period end quote.

14 I believe the you in there is -- well,
15 actually, I don't know who the you in there is.

16 The email was sent -- oh, I guess it's
17 addressed to the Governor. So I assume the you in
18 that email is the Governor.

19 But let me nonetheless ask you, Mr. Baird,
20 did Mr. Dillon ever share any thoughts he had with
21 you outside of the presence of legal counsel
22 regarding thoughts he had about issues related to
23 Detroit's pension liability other than what you've
24 testified to already today?

25 A. No, not outside presence of legal counsel.

1 Q. I'd like to show you a document I'll mark as exhibit
2 9.

3 Exhibit 9 marked for identification

4 BY MR. DeCHIARA:

5 Q. It's a two-page document that's stamped at the
6 bottom D T MI 00113909.

7 My question on this document, Mr. Baird is
8 simply can you identify this document?

9 A. I'm not sure. Some of the content appears familiar
10 but this format of the document is not familiar to
11 me.

12 Q. Okay. So you're not -- can you testify where this
13 document came from or what it is?

14 A. I couldn't tell you that, no.

15 MR. DeCHIARA: I have no further questions.

16 Thank you for your time Mr. Baird.

17 THE WITNESS: Thank you.

18 MR. WERTHEIMER: I've got a few questions.

19 Want to take a break.

20 VIDEO TECHNICIAN: Off the record 3:31 p.m.

21 (A brief recess was taken.)

22 VIDEO TECHNICIAN: We're back on the record
23 at 3:46 p.m.

24 BY MR. WERTHEIMER:

25 Q. Mr. Baird my name is Bill Wertheimer. I represent

1 what we've been calling the Flowers plaintiffs which
2 are a group of Detroit retirees who filed one of the
3 lawsuits that preceded the bankruptcy, and I'm going
4 to ask you a few questions.

5 You testified about a conversation you had
6 with Kevyn Orr right around the time that he sent
7 the letter to the Governor seeking authorization for
8 bankruptcy. Do you recall that?

9 A. I do.

10 Q. Did he in any way indicate why he was going to make
11 the question at that time.

12 A. No. Well, I don't recall that he did.

13 Q. Do you recall asking him anything about that, you
14 know, why now Kevyn or what's happening or --

15 A. No.

16 Q. Do you recall whether you were surprised about it,
17 that is the timing, not the act? Or put another way
18 had you had any kind of a warning or anything going
19 on that would lead you to think that --

20 A. I had seen a communications document that had
21 Friday, the -- I don't remember the exact date, but
22 Friday. Might have been the 19th.

23 Q. Right. Friday was the 19th?

24 A. Right, Friday the 19th as the date that it appeared
25 we'd go forward.

1 Q. Had you seen that document before the conversation
2 with Orr?

3 A. No.

4 Q. After?

5 A. After.

6 Q. Okay. Is the document you saw what was marked at
7 the Governor's deposition as Exhibit 6 or something
8 like it?

9 A. Yes.

10 Q. Okay. And do you remember how you came to see that
11 document? Was it emailed to you were you talking to
12 somebody about it?

13 A. No, I believe it was emailed to me.

14 Q. Do you remember by who?

15 A. I don't.

16 Q. Do you remember whether you talked to anybody about
17 it between its issuance and the actual filing?

18 A. Talked about the communications plan?

19 Q. Well, broader than the communications plan but just
20 the fact that it was going to be -- the bankruptcy
21 was going to occur?

22 A. No.

23 Q. Now, you also testified that you had had
24 conversations or a conversation I think you said
25 with Orr where you asked him a question about the

1 distribution of the income of retirees?

2 A. Yes.

3 Q. And you also talked to the Governor's is it chief of
4 staff Mr. Muchmore?

5 A. Yes.

6 Q. About that same issue, not asking a question but
7 about --

8 A. I related my conversation with Kevyn to Dennis.

9 Q. Can you put a time frame on these conversations?

10 Can you tell us approximately when they occurred?

11 A. I believe it was after the filing because of all of
12 the public consternation around pensions and I -- as
13 I testified earlier, I wanted to know what the
14 practical impact of any action would be.

15 Q. And if I understand it right, the reason you wanted
16 to know is that was kind of the germ of an idea for
17 maybe some legislation that might be able to at
18 least in some way ameliorate the condition or the
19 problem?

20 A. Correct. I was thinking unilaterally which I'm
21 known to do.

22 Q. I understand. Well you're anticipating my next
23 question.

24 At the point you had these conversations,
25 was it your understanding that it was the Governor's

1 position that the state was not going to be putting
2 any money into Detroit at least as it would relate
3 to the retiree issue?

4 A. I don't recall if I would know whether that was the
5 Governor's position but I was well aware that the
6 legislative appetite for funding to Detroit was
7 highly -- was very low.

8 Q. Okay. Okay. Had you had any conversations up to
9 that point with the Governor where -- excluding
10 conversations with counsel present where you
11 discussed that fact, that is we're not going to be
12 able to get legislation through to do anything about
13 that?

14 A. No, not explicitly.

15 Q. Implicitly.

16 A. Not even implicitly. I don't recall any
17 conversations with the Governor talking about a
18 strategy where funds would be appropriated for
19 Detroit.

20 Q. Do you recall as of the point that you recall this
21 conversation with Orr and had the conversation with
22 Muchmore that the Governor publicly was taking the
23 position that although the state might be willing to
24 assist relative to services for residents of the
25 city, it would not be willing to put money in for

1 pensions or anything other than services for the
2 city.

3 A. I wasn't part of those conversation.

4 Q. Okay?

5 A. If they existed.

6 Q. All right. You were shown -- well, it's your
7 deposition, Exhibit No. 1. This is the Jones Day?

8 A. Uh-huh.

9 Q. Pitch from January 31st?

10 A. Yep yep.

11 Q. The pages you were shown, and I'm going to show them
12 to you again, where there's these -- one or more
13 references to pensions, is in part four of the
14 written presentation entitled components and
15 considerations for restructuring plan.

16 MR. ELLSWORTH: Do you have a page number,
17 Mr. Wertheimer.

18 MR. WERTHEIMER: Yeah, that's page 34.

19 BY MR. WERTHEIMER:

20 Q. Do you recall who from Jones Day was presenting this
21 part of the pitch? And again I'm assuming it was
22 actually presented to you. This isn't just a
23 writing that they handed out?

24 A. That's correct.

25 Q. Okay, go ahead then.

1 A. I believe it was Bruce Bennett.

2 Q. Did Mr. Orr make any part of the presentation?

3 A. He did.

4 Q. What part did he make?

5 A. His was predominantly a presentation around his
6 background credentials experience and his ties to
7 Michigan.

8 Q. Not as to any of the specific parts unless there's
9 some reference to Orr and his background in this
10 document?

11 A. That's correct.

12 Q. Okay. Now, I think if you take a look at page 43, I
13 think that's what counsel showed you before, you'll
14 see the bottom line literally on page 43 reads
15 Chapter 9 could be used or threatened -- I'm sorry
16 let me let you get there.

17 A. Okay.

18 Q. Take a look at the bottom line. Chapter 9 could be
19 used or threatened as a means to accomplish a
20 compromise of benefit cost rejecting or compromising
21 claims. Do you see that?

22 A. I do see it.

23 Q. Do you recall the presentation including that point?

24 A. I do not recall that specific point and I note that
25 these are speaker notes which may or may not have

1 been articulated.

2 Q. Well, that's one of the reasons I'm asking.

3 A. Because this is the first time I've seen -- I don't
4 have a version --

5 Q. In this form I understand.

6 A. -- like this.

7 Q. I understand. And I think you were -- I had
8 misspoke before. You were not shown that page by
9 previous counsel.

10 You were shown I think if you turn to page
11 41 the question referenced it. Again, the bottom
12 line, if needed, Chapter 9 could be used as a means
13 to further cut back or compromise accrued financial
14 benefits otherwise protected under the Michigan
15 constitution.

16 Do you recall that point even in a general
17 way being made in the presentation?

18 A. This was back in January.

19 Q. Right.

20 A. And I don't recall the specific point but every one
21 of those firms would have discussed all of the
22 various approaches, strategies, options and whatever
23 their background and experience had them -- had
24 taught them from other municipal situations. So
25 generally, it could have been made but I don't

1 recall it.

2 Q. All right. Do you recall that by the time all those
3 pitches were made that you were of the understanding
4 that the lawyers whether Jones Day or one of the
5 other firms were of the view that Chapter 9 could be
6 used as a means to cut back these Michigan -- these
7 benefits that are otherwise covered by this Michigan
8 constitutional provision?

9 A. No. I am not. Not explicitly. I do recall
10 discussions around Chapter 9 but not as it pertains
11 specifically to any Michigan constitution article.

12 Q. Do you recall and I think the time frame is May -- I
13 could find it somewhere -- but Kevyn Orr was already
14 emergency manager he was interviewed by the Detroit
15 Free Press and rather publicly and in a way that
16 ended up getting spread around publicity wise talked
17 about the fact that in a Chapter 9 filing the
18 pension rights of retirees could be trumped, was the
19 work he used, by federal law.

20 Do you recall generally the emergency
21 manager making that point at around that point in
22 time?

23 A. I've made it a practice to not read the Detroit
24 newspapers these days.

25 Q. All right. I'll accept that. Do you recall that at

1 least by that point in time you knew that in fact
2 that Orr was taking that position; that is, that he
3 was using Chapter 9. I don't want to use pejorative
4 terms.

5 A. No.

6 Q. That he was using the possibility of a Chapter 9 as
7 a way to try and convince people to sit down and
8 talk with him particularly retirees?

9 A. Right.

10 0. Go ahead.

11 MR. ELLSWORTH: Just let him get his
12 question out before you answer.

18 BY MR. WERTHEIMER:

19 Q. Fair enough. At the point he filed bankruptcy, do
20 you have an understanding as to whether there was
21 any way that the City could deal with the problem of
22 pensions without going into bankruptcy?

23 A. Repeat the question.

24 Q. As of let's say the time the bankruptcy was filed,
25 as of that time, did you have an understanding that

1 bankruptcy was going to be the only way that the
2 City could deal with its pension problem without
3 asking for state assistance state assistance that
4 you knew you'd have -- the Governor would have
5 difficulty getting?

6 A. I had not contemplated it in terms of the City's
7 pension problem. I have contemplated it in terms of
8 \$18 billion in liability and bondings that couldn't
9 be paid and debt service, that it was becoming clear
10 to me that in the absence of any negotiated
11 agreements with any of the major constituency that
12 bankruptcy was becoming more and more evident with
13 each passing month.

14 Q. You had mentioned that -- when I say you mentioned
15 you testified in response to earlier counsel's
16 questions that you do recall having one conversation
17 with Orr about the issue of this state
18 constitutional provision that protects pensions. Do
19 you recall that?

20 A. I do.

21 Q. Okay. Can you put a time frame on that at all?

22 A. It was back during the early interaction with Kevyn.
23 I had gotten in the habit of carrying a small
24 constitution with me because I was referring to it
25 on a regular basis across many things, and so I knew

1 the article was there and I said to Kevyn, are you
2 aware of this? He said we're aware.

3 Q. He didn't go beyond that at all. He didn't suggest
4 in any way, shape or form how he intended to deal
5 with it?

6 A. No, not to me.

7 Q. Okay. And do you have a memory as to what triggered
8 you to talk to him about it at that point in time
9 other than that you had the constitution in your
10 pocket?

11 A. No, sir, other than -- you asked about the trigger.
12 During the recruitment process, we covered a lot of
13 ground and that ground included all the reasons you
14 should do this, and all the reasons you shouldn't do
15 it. And it was a discussion that took place over a
16 few weeks, and I don't recall any specific trigger
17 other than an old T square saying here are the pros
18 and the cons and the things you ought to be thinking
19 about it.

20 Q. All right. It's part of you giving him information?

21 A. Yes that's fair.

22 Q. That you are hoping will be helpful to him?

23 A. That would be a fair characterization.

24 MR. WERTHEIMER: All right. I have nothing
25 further. Thank you.

1 MR. SHERWOOD: Good afternoon, Mr. Baird.

2 I'm Jack Sherwood from Lowenstein Sandler and we
3 represent AFSCME in the City's bankruptcy. I have a
4 few questions. I'll try not to go over ground
5 that's already been covered.

6 Let me just go back to your engagement by
7 the Governor. In reviewing your testimony from the
8 prior case, did that start in January 2011?

9 A. It did.

10 Q. And I think you also testified that the E M
11 selection process began in October or November 2012;
12 is that right?

13 A. I would not characterize it as a selection process
14 but I would characterize it as I began thinking
15 about planning for the future in a substantive way
16 about that time.

17 Q. And I think you said that you were looking for
18 sources and candidates. Does that sound right?

19 A. Yes. I would through my own network or the network
20 of people that I knew and trusted I would look for
21 individuals that had characteristics and then I
22 would talk to them about either their potential for
23 a role like this or whether they knew of
24 individuals. So that's what I meant by sources or
25 candidates.

1 Q. Right. So a source is someone who isn't necessarily
2 a candidate but might refer someone a candidate to
3 you, correct?

4 A. They could be both.

5 Q. Okay. Was Jones Day or anyone from Jones Day a
6 source that you contacted?

7 A. Prior to meeting Steve Brogan, no.

8 Q. And when did you meet Steve Brogan?

9 A. January 29th it appears.

10 Q. So prior to that, no sources from Jones Day. How
11 about miller buck fire source?

12 A. Yes. Ken buck fire was a source.

13 Q. I want to talk a little bit about NERD. We'll use
14 that acronym again. They pay your bills correct?

15 A. They pay my fees yes.

16 Q. And that's been the case since January of 2011?

17 A. Correct.

18 Q. Can you just give me a little more detail on how
19 that came about?

20 A. Do you have specific questions, because I've
21 testified already.

22 Q. I -- yeah. I'd like to know how it came about?

23 A. Okay. My original agreement with Governor Snyder
24 was once we pulled the cabinet and his direct
25 reports together after he was elected during the

1 transition period that I would be returning to my
2 home at that time in Illinois on the first day after
3 his inauguration, the first working day. He asked
4 me if I would consider staying on for a year, and I
5 said I would. And he said -- I said but I don't
6 make for a very good bureaucrat or government
7 employee, and he said if you would make me -- if you
8 would make you know the team your exclusive client
9 how much would it cost? And I gave him a very cut
10 rate amount. And he said we could cover that out of
11 this fund to further good government at non-taxpayer
12 expense.

13 Q. And would you describe the fund as a lobbyist fund?

14 A. A lobbyist?

15 Q. Yeah.

16 A. What would a lobbyist fund be?

17 Q. I don't know. I guess you're --

18 A. If you tell me what a lobbyist fund is, I'll tell
19 you if I think it's a lobbyist fund.

20 Q. Well --

21 MR. WERTHEIMER: It's not good.

22 BY MR. SHERWOOD:

23 Q. Would you describe the new energy to reinvent and
24 what is it diversify?

25 A. Yes.

1 Q. Would you describe is that as an entity that engages
2 in lobbying?

3 A. No.

4 Q. And do you know who manages NERD?

5 A. No.

6 Q. And you don't know who is on the board? You don't
7 know who the officers, directors are?

8 A. No.

9 Q. Or trustees?

10 A. Nope.

11 Q. You just know the name of the person who signs your
12 check; is that right?

13 A. I do. I know who I submit the invoice to and I know
14 who signs the check. Outside of that, I don't know
15 anything else.

16 Q. You don't know who any of their backers are?

17 A. Don't know a single donor.

18 Q. Okay. The January 29th meeting -- couple more
19 questions. Was Mr. Buck fire there?

20 A. He was.

21 Q. And what role did he play in organizing the meeting?

22 A. Ken advised Andy, Chris Andrews and Jack Martin, the
23 City's C F O at the time, on considerations and
24 capabilities of firms that specialized in
25 restructuring. And so he identified the firms that

1 he thought had significant expertise in the areas
2 that would be of greatest interest to the City and
3 he said these are the firms that we should bring in
4 to help you understand how to construct a request
5 for proposal to a broader variety of firms.

6 Q. Did he devise some type of scoring system for the
7 firms at that meeting?

8 A. Not that I saw, no.

9 Q. How about afterwards?

10 A. No. I'm trying to recall and I don't think I ever
11 saw any sort of a scoring mechanism for any of these
12 firms.

13 Q. Did you have any role in the selection of Jones Day
14 as the City's counsel?

15 A. I did not.

16 Q. Did you express any preference to the City as to who
17 should be retained as counsel?

18 A. I believe jack Martin asked my opinion from what I
19 thought at that meeting and from my prior experience
20 with firms when I was with price water house
21 Coopers. And I believe that I gave him my opinion
22 at the time and my opinion was that I didn't think
23 he would go wrong with several of the firms but that
24 I thought Jones Day by and large had more of the
25 fire power in the various areas that the firm --

1 that the City was looking for than the others did.

2 Q. During the Jones Day presentation -- hold it. Let
3 me step back.

4 I think you said something like one of the
5 reasons you chose Jones Day was that they have --
6 they do a better job of keeping Detroit out of
7 bankruptcy. Do you remember testifying to that?

8 A. No I don't believe I testified to that. I do recall
9 what I intended to say if that wasn't it.

10 Q. What did you intend to say? Did you think Jones Day
11 had offered the City a better chance to stay out of
12 Chapter 9?

13 A. I don't know that Jones Day as a firm had -- I don't
14 have an opinion whether Jones Day as a firm is --
15 would help the City stay out of Chapter 9 or not.

16 It was my contention that in the recommendation of
17 Kevyn Orr as a great candidate for the emergency
18 manager that his background and experience would
19 serve as a significant reminder to folks that they
20 should negotiate in good faith to stay out of the
21 courts because here is a man who understood exactly
22 how to navigate the courts.

23 Q. But isn't it true that Mr. Orr and Jones Day were of
24 the view at all times that it would be extremely
25 difficult to keep the City of Detroit out of

1 Chapter 9?

2 MR. ELLSWORTH: I object to foundation.

3 THE WITNESS: I don't know that.

4 BY MR. SHERWOOD:

5 Q. Can you look at page 13 of the presentation.

6 A. Uh-huh.

7 Q. And if you look at the end of it, basically you'd
8 agree that this slide talks about out of court
9 solutions being preferred but the conclusion at the
10 end is that they are extremely difficult to achieve
11 in practice. Do you see that?

12 A. I do see it.

13 Q. Did anyone from Jones Day convey this message to the
14 group at the meeting on January 29th?

15 A. I don't recall explicitly, no.

16 Q. And if you look at the next page, page 14, you know
17 even for the speaker notes it says an out of court
18 solution requires consensus or near consensus of
19 effected constituency, this is extremely hard to
20 achieve in practice. Do you recall as part of the
21 oral presentation someone from Jones Day saying that
22 the idea that the City of Detroit is going to avoid
23 Chapter 9 is pretty farfetched?

24 A. I don't recall anyone saying that the idea was
25 farfetched.

1 Q. Well, do you recall them using words like that?

2 A. No, I don't.

3 Q. You don't recall words like extremely difficult as
4 it says on the slide?

5 A. Well, I don't recall those words but I wouldn't
6 dispute them.

7 Q. Do you recall words like do you recall Mr. Orr
8 having conversations with you wherein he suggested
9 that it would be extremely difficult to achieve an
10 out of court solution to Detroit's fiscal problems?

11 MR. ELLSWORTH: Objection to the extent
12 that it would disclose lawyer client conversations.

13 Q. Do you recall any such conversations outside the
14 presence of counsel?

15 A. Again, which conversations? That achieving success
16 out of court is difficulty?

17 Q. Right.

18 A. Yes, I do recall those conversations.

19 Q. Do you recall those conversations with Mr. Orr
20 outside of the presence of counsel correct?

21 A. No not with Mr. Orr.

22 Q. With who?

23 A. With the principals at McKenna long.

24 Q. Is that a law firm?

25 A. Yes.

1 Q. And who do they represent?

2 A. We asked them for I guess when I say we Andy Dillon
3 asked them for their best rationale on how to keep
4 us out of the courts and what the implications you
5 know of going into the courts were to educate the
6 team on our resolve to stay out of the courts.

7 MR. ELLSWORTH: Excuse me was that another
8 presenter just to clarify this.

9 BY MR. SHERWOOD:

10 Q. Was McKenna long making a presentation?

11 A. They were one in the first in presence at this
12 meeting.

13 Q. Did they have that conversation with you at that
14 meeting or is that something that occurred before or
15 after that meeting?

16 A. It occurred before.

17 Q. How long before?

18 A. I don't recall.

19 Q. And at the time McKenna long wasn't retained by the
20 City as its counsel?

21 A. No they weren't retained by anyone.

22 Q. Okay. What was their view on the prospects for
23 keeping the City of Detroit out of Chapter 9 if you
24 remember?

25 A. I don't think they opined on the prospects.

1 Q. What did they opine on?

2 A. They opined on all of the benefits associated with
3 staying out. They were part of the education
4 process for why you should stay out of the courts.

5 Q. And but just to be clear did they opine on the -- on
6 the likelihood that Detroit would be able to stay
7 out of bankruptcy and still resolve its financial
8 issues in sort of an out of court restructuring?

9 A. No.

10 Q. They never opined on that?

11 A. No.

12 Q. Getting back to Jones Day, did you recall them
13 making a presentation at the January 28th meeting
14 where they stressed the importance of making a
15 record of a good faith negotiations?

16 A. It was the 29th now that I've been educated.

17 Q. Okay. I'm sorry. The 29th meeting. Did they -- at
18 that meeting did they stress the importance of
19 making a record of negotiations with creditors?

20 A. Did Jones Day stress the importance of making a
21 record of negotiations.

22 Q. Right.

23 A. I don't recall that explicitly.

24 Q. Now if we can look at B five -- I call it Baird
25 five. Can you get that one sir? I'm really not

1 asking about this document, but it's February of
2 2013 and the email from you to Kevyn Orr on February
3 20th talks about brokering a meeting between Mr. Orr
4 and the mayor.

5 Was it important from your perspective to
6 broker peace between the mayor and Mr. Orr?

7 A. It was my belief that a good working relationship
8 between the two of them would be in the best
9 interest of the City.

10 Q. What about the City council? Did you have the same
11 view towards the relationship between Mr. Orr and
12 the City council for the City of Detroit?

13 A. If your question is do I believe that a good
14 relationship between Kevyn Orr and the City council
15 would be in the City's best interest the answer
16 would be yes.

17 Q. I guess the question is given that, right, did you
18 try to broker some type of meeting between Mr. Orr
19 and the City council?

20 A. No.

21 Q. Why not?

22 A. Because I did not think that it was possible.

23 Q. There were members of the City council that
24 supported were Orr were there not?

25 A. I don't know.

1 Q. And I know that certain members of the City council
2 were very vocal against him or any other emergency
3 manager is that right?

4 A. I read the papers and there were arguments against
5 it that came from members of council that I recall,
6 yes.

7 Q. Ultimately were you able to broker a working
8 relationship between Mr. Orr and the mayor?

9 A. You'd have to ask Mr. Orr and the mayor.

10 Q. From your perspective, do you think --

11 A. I can't opine. I testified that Kevyn Orr thought
12 it important to meet the mayor and to determine if
13 they could work together if he were to accept the
14 Governor's recommendation. The mayor indicated the
15 same about Kevyn Orr. We did the best to articulate
16 a framework under which that working relationship
17 could exist. And you'll have to talk to those two
18 men as to how successful that arrangement turned out
19 to be.

20 Q. Now, in February of 2013, I guess we'll use B five
21 just for time purposes. I think you testified that
22 there was one other candidate that still was sort of
23 in the running at that point in time.

24 A. There was a candidate that we had agreed we meaning
25 the Governor and his chief of staff and treasurer

1 that we had agreed had the requisite capabilities
2 and had indicated a willingness to do the job but we
3 wished to continue the vetting of Kevyn to determine
4 whether he would be a better candidate.

5 Q. Had you determined at this point that Mr. Orr was
6 the top candidate February 2013?

7 A. I don't -- I believe I was still doing due diligence
8 at this particular time, I think, but I was
9 cautiously optimistic that Kevyn might be the better
10 candidate.

11 Q. And at this time again February 20th, 2013, do you
12 know whether the Governor shared that view?

13 A. I don't recall on the timetable if that were the
14 case or not.

15 Q. What about Mr. Dillon?

16 A. I think Mr. Dillon you'd have to ask him as to
17 whether he thought Kevyn was the better of the two
18 candidates.

19 Q. Did Mr. Dillon express to you who he thought was the
20 better of the two candidates?

21 A. At some point after Kevyn had indicated that he
22 could work his way clear of a withdrawal from his
23 firm and that if nominated by the Governor he would
24 be in a position to accept an appointment by the E L
25 B, yes, I think Andy indicated to me at that time

1 that he thought Kevyn was the better of the two
2 candidates.

3 Q. Now, was the other candidate an attorney?

4 A. No.

5 Q. Was the other candidate a man or a woman?

6 A. A man.

7 Q. Was the other candidate local?

8 A. Define local.

9 Q. A Detroit resident?

10 A. No.

11 Q. A surrounding area of Detroit resident?

12 A. I don't -- I won't dance here. I'll tell you he was
13 -- his residence was south but he had been a Detroit
14 resident.

15 Q. Did the person have restructuring experience?

16 A. He did.

17 MR. WERTHEIMER: I'm sorry, did you say he
18 was a Detroit resident.

19 THE WITNESS: He had been a Detroit
20 resident but he was not at the time that I had
21 discussed with him.

22 MR. WERTHEIMER: I just missed it. Thank
23 you.

24 BY MR. SHERWOOD:

25 Q. I'd like to ask you to look again at exhibits 7 and

1 8. If you could get those and look at 7 first. You
2 got this email, Exhibit 7; is that correct?

3 A. Yeah, I'm lacking at 7.

4 Q. I'm looking at the second paragraph and it appears
5 that Mr. Dillon is reporting to the Governor and
6 others including yourself when he says he met with
7 the consultants to get briefed on the pension issue
8 this afternoon, which consultant -- do you know what
9 consultants he's referring to?

10 A. No. I testified earlier that there are weekly
11 consultant meetings and I gave you the names of who
12 were on those calls but I don't recall who he
13 specifically is referring to here.

14 Q. Do you know if they were the consultants for the
15 City or some other consultants?

16 A. I don't.

17 Q. And he concluded that the situation was not good and
18 that current pensions had to be cut significantly,
19 correct?

20 A. Well, I many, I'm reading this. It says bottom line
21 the situation's not good and the view of the
22 consultants is that current pensions have to be cut
23 significantly. I don't know which consultants he's
24 referring to.

25 Q. Okay. So if you look at -- so at least at some

1 point as of this date certain consultants were
2 telling Mr. Dillon and Governor Snyder that the
3 pensions had to be cut significantly. Can we agree
4 on that?

5 A. I can agree that I'm reading the same line that
6 you're reading.

7 Q. Okay.

8 MR. ELLSWORTH: Were you finished with your
9 answer rich.

10 THE WITNESS: Yes.

11 MR. SHERWOOD: I'm sorry. Let's look at
12 the next exhibit 8. And this exhibit also deals
13 with the issue of pension liability. Would you
14 agree?

15 A. It would appear so.

16 Q. And in this email Mr. Dillon reports that in
17 Mr. Orr's discussion with the pension he is not
18 going to translate the underfunded amount into an
19 impact on retirees or employees vested rights. Do
20 you see that?

21 A. I do.

22 Q. When you read this email on July 9th, the day after
23 you got Exhibit 7, did you ask Mr. Dillon or the
24 Governor why Mr. Orr is refusing to send a message
25 on the underfunding amount to the representatives of

1 the pensions?

2 A. I don't recall asking that question, no.

3 Q. Did it appear to you that Mr. Orr was not being
4 candid with the pensions by not reporting the fact
5 that they had to be cut significantly?

6 A. I'm sorry, say that again.

7 Q. Did it occur to you that Mr. Orr might not be being
8 candid with the pensions by not reporting to them
9 the fact that the pensions had to be cut
10 significantly?

11 A. That would be pure speculation on my part.

12 Q. But this situation didn't cause you to make any
13 recommendations to Mr. Dillon or the Governor or
14 Mr. Orr; is that your testimony?

15 A. Yes. I get copied on a lot of emails but I've
16 testified that pension liability, pension models are
17 frankly outside of my wheelhouse and that's not my
18 area of focus in consulting to the Governor or his
19 team.

20 Q. You testified that one of the things you did in the
21 pensions is look at the practical impact on the
22 people losing their pensions. Do you remember that
23 testimony?

24 A. I testified that I was -- it was desirable for me to
25 see what that impact was, but that I never received

1 the data to actually understand the impact.

2 Q. And but you said you talked to the Governor about
3 that and I think Mr. Orr and Mr. Dillon and they all
4 said that that was a good question. Do you recall
5 that testimony?

6 A. I don't recall talking to the Governor about that.

7 I recall talking to Mr. Orr about that. And I
8 recall saying to Andy that I had that conversation
9 with Mr. Orr.

10 Q. And is it -- am I right -- or tell me why you
11 thought that was important.

12 A. I'm a curious guy. I don't know what to tell you.
13 I thought it was important because I did not
14 understand -- this would be the third time I've
15 testified to this. I did not understand what the
16 distribution of those 20,000 pensioners was and what
17 it meant in real dollars and real lives, and that
18 was a question that I wanted to know the answer to
19 so I was looking for the data set to ascertain that.

20 Q. And the pensioners whose benefits are being cut you
21 understand, do you not, that they don't have a
22 safety net like people in private industry do?

23 MR. ELLSWORTH: Objection as to the form.

24 Go ahead and answer rich.

25 THE WITNESS: Which pensioners are being

1 cut?

2 BY MR. SHERWOOD:

3 Q. Well, to the extent pensioners are being cut they
4 don't have a safety net like the PBGC?

5 A. Well, I know that they don't have a PBGC that's
6 correct.

7 Q. Are you aware of any other safety net that they
8 might have?

9 A. I'm only aware of safety nets that exist for all
10 citizens once they get below a certain poverty line.

11 Q. But they don't relate to their pension do they?

12 A. I believe that certain benefits are contingent on
13 what your income is. Whether that income comes from
14 a pension or some other form it's your income.

15 Q. So you're suggesting that these other government
16 programs act as a safety net in lieu of the PBGC for
17 lost pension benefits?

18 A. No I think you're suggesting that.

19 Q. I'm trying to understand what you're saying. I'm
20 not trying to argue with you.

21 A. What question is it you would like me to answer.

22 Q. I'd like to know why -- whether you consider the
23 fact -- in your investigation of the practical
24 impact on people, were you doing that investigation
25 out of concern for the people who were losing or

1 stood to lose their pensions because they didn't
2 have a safety net? That's what I want to know.
3 A. Okay. I am not aware of what safety net does or
4 doesn't exist for them currently. I was interested
5 in what the practical implications of material
6 savings would be against the distribution of those
7 receiving pensions. And it was the answer to that
8 question that led me to ask another question which
9 is whether or not there might be an appetite for
10 legislative remedy in the absence of safety net.

11 Is that sufficiently clear?

12 Q. Let me read it. And in terms of appetite for
13 legislative remedy, your prior testimony was that
14 your understanding was that that appetite was very
15 low and that's why the inquiries kind of stopped
16 there?

17 A. My understanding is that the appetite for a large
18 scale appropriation to Detroit was pretty low. I
19 didn't have an opinion about whether or not there
20 was an appetite for an incremental safety net for
21 impacted pensioners were they to be impacted. I was
22 simply asking the question.

23 Q. The June 14th meeting, you were at the meeting and I
24 think you testified something like that you
25 indicated that you thought Mr. Orr did a good job

1 presenting the June 14th proposal. Do you remember
2 that topic?

3 A. Yes, I do.

4 Q. Do you know whether at that meeting Mr. Orr or
5 anyone on behalf of the City of Detroit requested
6 that the parties there provide counter proposals to
7 the proposal that was being made on June 14th?

8 A. I don't recall the term counterproposal but I do
9 recall an invitation being put out to the group that
10 says once you've digested this financial information
11 and you understand the wherewithal what exists, to
12 the extent that you want to sit down and negotiate
13 in good faith now is not the time to do that but
14 there will be that time and here's the information
15 that you need in order to interact intelligibly. I
16 do recall that.

17 Q. And that meeting was approximately a month before
18 the bankruptcy filing. Were there followup -- were
19 you present at any followup meetings after the June
20 14th meeting?

21 A. With creditors?

22 Q. Right.

23 A. No.

24 Q. Did anyone report to you on the status of followup
25 meetings with creditors that occurred after the June

1 14th meeting?

2 A. With counsel, yes.

3 Q. What about without counsel?

4 A. Not that I recall.

5 Q. And what was said?

6 MR. ELLSWORTH: Well I -- I object to the
7 extent that would call for disclosure of
8 lawyer-client conversations. I think Mr. Baird said
9 that the conversations that he had were with counsel
10 present. He can clarify if I heard that wrong.

11 THE WITNESS: No, that's correct. Counsel
12 was present.

13 BY MR. SHERWOOD:

14 Q. But counsel was -- was counsel reporting back on how
15 the negotiations were going with the creditor
16 groups?

17 A. No.

18 Q. Who was making that report?

19 A. Kevyn Orr.

20 Q. What did he say?

21 MR. ELLSWORTH: Well, I object again. If
22 counsel was present during that discussion then
23 that's subject to the attorney-client privilege and
24 I object.

25 MR. SHERWOOD: Are you instructing him not

1 to answer.

2 MR. ELLSWORTH: Yes.

3 MR. SHERWOOD: A conversation between
4 Mr. Orr and him reporting on what happened at
5 negotiations with creditors.

6 MR. ELLSWORTH: It was.

7 THE WITNESS: This was not a one on one.

8 MR. ELLSWORTH: Was counsel present?

9 A. Yes.

10 MR. ELLSWORTH: I object and I'm
11 instructing him not to answer.

12 BY MR. SHERWOOD:

13 Q. Were you involved in any negotiations or did anyone
14 report to you on negotiations with the bond holder
15 creditors of the City of Detroit?

16 MR. ELLSWORTH: Again, to the extent that
17 would require a disclosure of lawyer-client
18 privileged conversations, I object.

19 MR. SHERWOOD: I just want a yes or no. I
20 don't want the content.

21 MR. ELLSWORTH: That's fine.

22 THE WITNESS: Updates of those discussions
23 were provided with counsel present.

24 BY MR. SHERWOOD:

25 Q. And none of that happened outside the presence of

1 counsel?

2 A. No.

3 Q. During your discussions with Mr. Orr prior to his
4 appointment, did he ever say to you that the
5 appointment of an emergency manager and the filing
6 of a Chapter 9 provides political cover for the
7 Governor and/or the mayor in regard to the process
8 of making the tough decisions that face the City of
9 Detroit in the context of the restructuring?

10 A. He never said that to me.

11 Q. Did anyone ever say that in your presence?

12 A. Say it, no.

13 Q. Write it?

14 A. I saw an email where it was written, so I know that
15 somebody said it.

16 Q. Okay. I think I might have a copy of that email.

17 Maybe I'll show it to you. Let's look at this one.

18 No. 10 marked for identification

19 BY MR. SHERWOOD:

20 Q. We've marked as Baird 10. You haven't seen it yet
21 though, huh?

22 A. Okay. Is this one where I need to start at the
23 bottom and read it through? This doesn't look like
24 any that I've ever seen before.

25 Q. Yeah, it's really just two pages. If you start on

1 the second page -- actually you are referred to this
2 so why don't we take a second to go through this and
3 start with the?

4 MR. ELLSWORTH: Rich do you need a chance
5 to read it?

6 THE WITNESS: Yeah, I need to read this.

7 MR. SHERWOOD: Okay. Tell me when you're
8 done.

9 A. Okay I've completed reading it.

10 Q. Let's start with the email on page 301 which is the
11 second page. And Corinne ball is talking to Kevyn
12 and she talks about the bloom berg foundation and
13 whether we should talk to you, Mr. Baird, about
14 financial support for the project and the E M. And
15 then she refers to carry Wilson from the auto task
16 force tells me about the foundation and its
17 interest.

18 I can ask Harry for contact info. This
19 kind of support in ways nationalizes the issue and
20 the project. Do you see that?

21 A. I do.

22 Q. Do you know whether the Bloomberg foundation and
23 Harry Wilson whether they were ever brought to your
24 attention by anyone at Jones Day?

25 A. They were not.

1 Q. So this is the first you're hearing of this?
2 A. No. I've seen not this entire string of email, but
3 I have seen from some emails that were provided in
4 discovery to me, I've seen this, the 1-31-13,
5 8:10 a.m. and I have seen all the way up through the
6 1-31, 11:01 a.m. from Kevyn Orr to Dan Moss but I
7 have not seen this last piece which is from Dan Moss
8 to Kevyn Orr.

9 Q. And by this last piece you're referring to really
10 the top of the email string correct?

11 A. The top of the email string, right. The most recent
12 string of this.

13 Q. So as of January 31st, 2013, do you know who Dan
14 Moss is?

15 A. I believe -- I don't know exactly who he is but I
16 know he's a colleague of Kevyn Orr's at Jones Day.
17 That's all I know. I've heard the name.

18 Q. As of January 31st, 2013, did Mr. Orr suggest to you
19 that Chapter 9 would be the best solution for the
20 City of Detroit for political reasons?

21 A. No he did not.

22 Q. Did he suggest to you that Chapter 9 would not be an
23 alternative as of January 31st, 2013?

24 A. I don't believe he placed any priority of any sort
25 on Chapter 9 to me in any conversation or

1 communication.

2 Q. During the course of your discussions with Mr. Orr,
3 did he emphasize the need to have the unqualified
4 support from the Governor during the -- during his
5 tenure as emergency manager?

6 A. I'm not sure I would use the term unqualified
7 support. But I certainly would testify that he
8 believed that support from the Governor for the
9 undertaking at hand was going to be an important
10 consideration.

11 Q. Did he say why that was important?

12 A. Yes, he did. That he recognized that this was going
13 to be a thankless job, a job where he would probably
14 be vilified and called a traitor to his race and to
15 his democrat background and that it would require a
16 great deal of resolve to overcome the difficulties
17 of the past decades that have gotten Detroit to
18 where it is today.

19 Q. Did he also seek the support of the financial
20 advisory board?

21 A. At the -- well, yes. But not during the recruitment
22 process.

23 Q. When did he make the request that the financial
24 advisory board should provide him with support and
25 oversight?

1 A. You'd have to.

2 Q. If he ever did.

3 A. Well, I have heard from members of the financial
4 advisory board that he has made those overtures but
5 you'd have to ask him as to when and context.

6 Q. But he never had any discussions with you about
7 whether it would be beneficial to get support from
8 the financial advisory board and how he was going to
9 go about that?

10 A. In general, counselor, I think he -- we had a lot of
11 discussions about he was going to need all the
12 support he could get from every corner he could get
13 it from including the F A B and city council.

14 Q. All right. Can I have one second? I think I'm done
15 but I don't want to close the record until I'm sure.
16 I just need one second.

17 (A pause was had in the proceedings)

18 MR. SHERWOOD: All right. I think that's
19 all. Thank you. I appreciate it.

20 A. Okay. Thank you.

21 MR. ELLSWORTH: Anybody else.

22 VIDEO TECHNICIAN: Depositions concluded at
23 4:49 p.m.

24 UNCERTIFIED ROUGH DRAFT

25

